

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMON BARRERA, JR.,

Defendant-Appellant.

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UNPUBLISHED

May 21, 2013

No. 311530

Saginaw Circuit Court

LC No. 10-035128-FC

Before: FORT HOOD, P.J., and FITZGERALD and O'CONNELL, JJ.

PER CURIAM.

A jury convicted defendant of third-degree fleeing and eluding a police officer, MCL 257.602A(3), assaulting, resisting or obstructing a police officer, MCL 750.81d(1), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (two counts), MCL 750.227b.<sup>1</sup> The trial court sentenced defendant to prison terms of 48 months to 15 years for the first three convictions, and two years' consecutive imprisonment for each of the felony-firearm convictions. Defendant appeals as of right. We affirm.

During the early morning hours on August 31, 2009, a dark-colored Cadillac pulled up next to another vehicle at an intersection in the City of Saginaw. Someone in the Cadillac fired multiple gunshots at the driver and three passengers in the vehicle. As the vehicle tried to speed away, more gunshots were fired from the Cadillac, which followed the vehicle for some time. One passenger was shot in the face and another was shot in the back. Soon thereafter, the police arrived on the scene and the driver of the vehicle explained what had happened. Approximately forty-five minutes later a police officer, who had received a dispatch regarding a dark Cadillac involved in a shooting, spotted the Cadillac and pulled behind it with the patrol car's siren and lights activated. The Cadillac initially pulled over but after two to three seconds it made a quick turn onto the street and sped away. The officer pursued the Cadillac and radioed for backup. Shortly thereafter, the Cadillac drove up over a curb and the occupants fled on foot. Defendant was eventually apprehended after a foot chase by other officers who had arrived as backup. During police questioning, defendant denied any involvement in the shootings but admitted

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<sup>1</sup> The jury acquitted defendant of four counts of assault with intent to murder, MCL 750.83, and carrying a concealed pistol, MCL 750.227.

driving the Cadillac when the shots were fired and later taking a gun from his passenger and throwing it out the window.

At trial, the prosecutor asserted that defendant had aided and abetted the shooter in the assault with intent to murder the driver and three passengers in the other vehicle. The jury acquitted defendant of those charges and found him guilty of the charges arising during the police chase.

At the sentencing hearing, defendant's attorney objected to certain statements in the presentence investigation report that allegedly inaccurately described the incidents leading to defendant's arrest. Defense counsel also raised a challenge to the scoring of Offense Variables (OVs) 1, 3, and 9. Counsel argued that, without the points assessed for those OVs, defendant's sentencing guidelines range would be 10 to 46 months instead of 19 to 76 months. The trial court rejected defense counsel's scoring challenges.

The sentencing court has discretion in determining the number of points to be scored provided that there is evidence on the record that adequately supports a particular score, *People v Waclawski*, 286 Mich App 634, 680; 780 NW2d 321 (2009), and thus this Court reviews the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score, *People v Carrigan*, 297 Mich App 513, 514; 824 NW2d 283 (2012); *People v Steele*, 283 Mich App 472, 490; 769 NW2d 256 (2009). The trial court's scoring of offense variables is determined by reference to the record, using the preponderance of the evidence standard. *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008). Its findings of fact are reviewed for clear error. *Id.*

On appeal, defendant concedes that in scoring the offense variables the trial court may consider facts associated with criminal activity even though the defendant was acquitted of the charges. See *People v Compagnari*, 233 Mich App 233, 236; 590 NW2d 302 (1998); see also *People v Ratkov (After Remand)*, 201 Mich App 123, 126; 505 NW2d 886 (1993), rem'd 447 Mich 984 (1994) (A fact that was not proven beyond a reasonable doubt in a criminal trial may still be proven by a preponderance of the evidence and thus used for sentencing.). Defendant's sole argument on appeal is that the trial court made no reference to the preponderance of the evidence standard in denying defendant's challenges to the scoring of OVs 1, 3, and 9. Interestingly, however, defendant neither argues nor attempts to show that a preponderance of the evidence of record does not support the trial court's scoring of these particular OVs. Under these circumstances, defendant has not demonstrated that the trial court clearly erred in scoring the sentencing guidelines.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ E. Thomas Fitzgerald  
/s/ Peter D. O'Connell